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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,329	08/16/2001	Laurent Cohen	488-182	3950

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EXAMINER	
CHAU, COREY P	
ART UNIT	**PAPER NUMBER**
2644	

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 09/931,329	**Applicant(s)** COHEN, LAURENT	
	Examiner Corey P. Chau	**Art Unit** 2644	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attached.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

VIVIAN CHIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

Response to Arguments

1. Applicant's arguments filed 10/17/2005 have been fully considered but they are not persuasive.

2. With respect to Applicant's argument on page 2, stating that "the logic of this rejection appears to be that the description of the deficiency of the prior art (the awkward operation of the prior art) is somehow an admission of the solution of this deficiency. However, if this rejection relies upon a clear statement of the deficiency of the prior art being an admission as to the solution, then this rejection relies upon the wisdom of hindsight gained after review of this disclosure, which is clearly inappropriate", has been noted. However, the Examiner respectfully disagrees. The Office Action discloses "Regarding Claim 1, Applicant's admitted prior art discloses an audio mixer wherein effects are frequently changed simultaneously, such as regeneration of the effect and the speed of the effect being used, but does not expressly discloses a trackball which can rotate with at least two degrees of freedom thereby controlling first and second variable; wherein said first variable is speed of an audio effect and is controlled by rotation of said trackball about a first axis and wherein said second variable is regeneration of an audio effect and is controlled by rotation of said trackball about a second axis. However, it would have been obvious to one having ordinary skill in the art to provide a device where two controls are changed simultaneously, such as well-known regeneration of the effect and the speed of the effect in order to permit precision and flexibility in real time dynamic sound control, and permit the sound engineer to achieve complex mixes with a large number of

parameters, as taught by DeVitt. DeVitt discloses sound mixing device (i.e. audio mixer) comprising a mouse (i.e. a mouse comprising a trackball that can rotate with at least two degrees of freedom)(column 6, lines 9-22), wherein the mouse is used to control the location of an icon on the display; a controller that generates multiple parameters control signal that is based upon the location of the icon and is used by the circuit to control multiple parameters affecting an audio output. **The states of the multiple parameters can be simultaneously controlled and usefully displayed, permitting precision and flexibility in a real time dynamic sound control and permitting a sound engineer to achieve complex mixes with a large number of parameters (column 1, lines 50-65)**. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Applicant's admitted prior art with the teaching of DeVitt to utilize a mouse comprising a trackball that can rotate with at least two degrees of freedom in order to control two variables simultaneously, such as well-known variables regeneration of the effect and the speed of the effect , therefore permitting precision and flexibility in a real time dynamic sound control and permitting a sound engineer to achieve complex mixes with a large number of parameters".

3. With respect to Applicant's argument on page 3, stating that 'all that is found in the cited part of the application is a statement of the deficiency of a prior art mixer with "a large number of dials and switches". The Examiner may not use such a statement from the applicant's disclosure to find a teaching or suggestion of the applicant's invention (see the second paragraph of MPEP 2143 as set forth above). Thus the Office

Action does not set forth a prima facie case of obviousness", has been noted. However, the Examiner respectfully disagrees. See above argument.